



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, California 95814

NOTICE OF PROPOSED AMENDMENT OF REGULATION

**California Code of Regulations
Title 2, Administration
Division 1, Administrative Personnel**

DATE: June 15, 2000

TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: PROPOSED AMENDMENT OF SPB RULE 548.40 – COMPETITIVE EXAMINATIONS FOR CAREER EXECUTIVE ASSIGNMENT POSITIONS

AUTHORITY:

Under authority established in Section 18701 of the Government Code, the State Personnel Board (Board) has proposed to change Section 548.40 of Title 2 of the California Code of Regulations (CCR).

REFERENCE:

This regulation is being amended to implement, interpret, and/or make specific Sections 18546, 19889, 19889.2 and 19889.3, Government Code; and Alexander v. State Personnel Board (2000) 80 Cal.App.4th 526 (Alexander).

PUBLIC HEARING:

Date and Time:	July 6, 2000 from 2:15 p.m. to 3:15 p.m.
Place:	Auditorium 801 Capitol Mall, Room 150 Sacramento, California
Purpose:	To receive oral public comments about this action.

PURPOSE OF THE AMENDMENT

On April 28, 2000, the Third Appellate District Court issued a published decision in Alexander, invalidating existing Board Rule 548.40, which governs examinations for Career Executive Assignments (CEAs). The court found that existing Board Rule 548.40 violates the merit principle set forth in Article VII of the California Constitution because it does not require the ranking and comparing of CEA examination candidates. The court found that, in order to be competitive, a CEA examination had to include a comparison of the relative merit of each candidate. As the court explained:

A competitive examination requires consideration of the applicant's standing in relation to others, even if not announced....It is the process of grading the test, that is, ranking and comparing the applicants, by which merit is ascertained. It is this process "that determines merit, effectiveness and fitness for appointment and promotion." (Lund v. California State Employees Assn., supra, 222 Cal.App.3d at p. 186, 271 Cal.Rptr. 425.) It is this process that the merit principle requires. [Footnote omitted.] Because the regulation, while requiring a competitive examination, dispenses with this essential process, it is invalid.

The Board is amending Board Rule 548.40 to comply with the court's decision in Alexander. The proposed amended regulation requires an appointing power that conducts a CEA examination to promulgate the job-related evaluation criteria that will be used to assess the qualifications of each candidate for the CEA position to be filled, to assess each candidate's qualifications for that position against the evaluation criteria, and to compare and rank each candidate against all other candidates based upon that assessment. The proposed amendment also requires that the appointing power must notify each candidate in writing of his or her ranking. The candidate appointed as a result of a CEA examination must be well-qualified to perform the duties of the position. For each CEA examination, the appointing power must maintain an examination file that includes the specific job-related evaluation criteria and selection procedures that were used in the examination, documentation on how those criteria were applied to the candidates, and documentation as to the competitiveness of the candidates' qualifications relative to each other.

WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written comments will close July 5, 2000 at 5:00 p.m. This is to allow time for Board staff to provide copies of any written comments to Board members for their consideration at the time of the hearing. Any person may submit written comments about the proposed changes. To be considered by the Board, written comments must be received at the attention of Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, before the close of the written comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, or telephone (916) 654-0842.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESSES:

No adverse impact on small businesses is anticipated from the proposed amendment. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

No fiscal impact exists.

Determination of Mandate :

The Board has determined that the proposed amendment does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The

proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal.

Impact on Housing Costs:

The proposal will not affect housing costs.

Impact on Businesses:

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

Further, this proposed amendment contains no new reporting, recordkeeping and other compliance requirements that would result from the proposed action.

Cost Impact on Private Persons or Entities:

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No costs to local agencies or school districts are required to be reimbursed.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

This proposal does not impose nondiscretionary costs or savings on local agencies.

ASSESSMENT:

The adoption of the proposed amendment will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

The Board must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

AVAILABILITY OF PROPOSED TEXT

The text of the proposed amendment and other related material are available upon request directed to the Board's contact person.

Subject: Amendment of CEA Examination Process

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AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Board will make the full text of the changed regulation(s) available for at least 15 days before the date the regulation amendment is permanently adopted.

LAURA M. AGUILERA, Chief
Personnel Resources and Innovations Division

Attachment: Text of Proposed Amendment of Regulation